General Terms and Licensing Conditions of NEVARIS Bausoftware GmbH

Version as of 1 October 2015

1. General

1.1 These General Terms and Licensing Conditions are applicable to all current and future contracts for goods and services of any kind with NEVARIS Bausoftware GmbH. Delivery of goods as defined in these General Terms and Licensing Conditions includes the delivery of software of any kind.

1.2 Any terms and licensing conditions of the customer that deviate from, contradict or complement these General Terms and Licensing Conditions do not become part of the contract without the express consent of NEVARIS Bausoftware GmbH.

2. Obligations of NEVARIS Bausoftware GmbH

As far as NEVARIS Bausoftware GmbH has not expressly committed itself to execute other services as part of a contract for delivery, the contractual obligations of NEVARIS Bausoftware GmbH are limited to the delivery of goods. In case of doubt, NEVARIS Bausoftware GmbH is under no obligation to provide other services that go towards commissioning the goods delivered, including but not limited to the setting up, installation, or provision of advice.

2.2 When software is delivered, it is the customer's responsibility to specify the site of operation of the software and to choose the appropriate hardware. The customer is also responsible for the installation of the software and the customisation or parameterisation of standard software, unless NEVARIS Bausoftware GmbH has expressly undertaken to carry out such installation, customisation or parameterisation services. The same applies to adapting the software for another operating system, hardware system or programming language, for which NEVARIS Bausoftware GmbH is not responsible, in case of doubt.

2.3 In case of doubt, NEVARIS Bausoftware GmbH is not obliged to advise the customer in choosing the site of operation of the software or the appropriate hardware when the software is delivered. Furthermore, NEVARIS Bausoftware GmbH is not obliged to advise, instruct or teach the customer how to use the software delivered, if in doubt.

2.4 In case of doubt, the obligations of NEVARIS Bausoftware GmbH when the software is delivered are limited to the provision of the software on one or several data carriers suitable for transfer to the processor, the provision of user documentation pertaining to the software, as well as the granting of the non-exclusive right to use the software as specified in point 7 of these General Terms and Licensing Conditions. The object of the agreement is the software in accordance with the program documentation applicable at the time of signing the agreement. In case of doubt, NEVARIS Bausoftware GmbH is not obliged to deliver upgrades/updates (alterations, extensions and improvements) to the software. The electronic transmission of the software is equivalent to the handover on suitable data carriers.

3. Dates and Deadlines

Where the contract specifies dates and deadlines for performance to be rendered by NEVARIS Bausoftware GmbH, the dates and deadlines are only binding to the extent that NEVARIS Bausoftware GmbH has expressly guaranteed such dates and deadlines.

4. Prices and Payment Terms

4.1 For delivery of goods within Austria, the prices of NEVARIS Bausoftware GmbH include delivery to the customer free domicile. Unless otherwise agreed, all prices for goods and services quoted by NEVARIS Bausoftware GmbH are exclusive of the statutory value added tax. Invoices become due within 14 days net.

4.2 In the case of payment in instalments, the customer obtains a fixed-term licence for 30 days for software produced by NEVARIS Bausoftware GmbH until the last instalment has been received in full. If each instalment is paid on time, NEVARIS Bausoftware GmbH will automatically renew the licence. If the customer is in arrears with an instalment or part thereof, the customer is in default, in which case the total invoice amount becomes due for payment, whereby instalments already paid up to that time are taken into account. Up to receipt of the full amount, NEVARIS Bausoftware GmbH has no obligation to provide further fixed-term licences to the customer. The customer will obtain a licence for an unlimited period concurrently upon receipt of the full amount.

5. Set-Off/Right of Retention

5.1. The customer may only set off his own counterclaims against open receivables of NEVARIS Bausoftware GmbH, if NEVARIS Bausoftware GmbH does not contest the customer's counter-claims or if a non-appealable court ruling has established that the counterclaim is justified.

5.2 The customer may only exercise his right of retention when a counterclaim is based on the same contractual relationship.

6. Reservation of Title/Time Limitation of the Licence

6.1 Ownership of the goods delivered by NEVARIS Bausoftware GmbH will not pass to the customer until the price has been paid in full. If there is an ongoing business relationship between the customer and NEVARIS Bausoftware GmbH, payment in full is replaced by the payment of all amounts that have arisen out of the business relationship to NEVARIS Bausoftware GmbH and are due for payment. Before payment of the purchase price in full or, in an ongoing business relationship, before payment of all amounts due for payment to NEVARIS, the customer may not dispose of any goods delivered by NEVARIS Bausoftware GmbH.

6.2 In the event of a delay in payment or other material breach of contract on the part of the customer, NEVARIS Bausoftware GmbH is entitled to request the customer return the goods subject to reservation of title, even in the event that NEVARIS Bausoftware GmbH does not rescind from the contract.

6.2 If software produced by NEVARIS Bausoftware GmbH has been delivered, the customer obtains a licence limited to a term that corresponds to the credit period agreed. A licence for an unlimited period will be handed over to the customer concurrently upon payment of the full amount. If the customer is in default of payment, he is obligated to make payment, even if the limited licence has expired. In this case the customer becomes obligated to make payment in advance.

7. Licensing Conditions of NEVARIS Bausoftware GmbH

7.1 If the computer programs listed in the order confirmation are software produced by NEVARIS Bausoftware GmbH itself, the Licensing Conditions below apply exclusively. NEVARIS Bausoftware GmbH reserves the right to revoke the right of utilisation of the software if the purchase price is not paid within the payment deadline.

7.2 NEVARIS Bausoftware GmbH grants the customer the single, non-exclusive and, in terms of time, unlimited right to use the software listed in the order confirmation within the scope of the provisions below. No rights exceeding the ones set out in the provisions below may be granted in connection with the provision of the software. NEVARIS Bausoftware GmbH reserves all further rights associated with the software, including but not limited to the right to distribute, exhibit, show, present and publish the software.

7.3 Unless agreed otherwise, the customer is entitled to use the software on one hardware device only, this means on one workstation in one place (single user application). The simultaneous installation, saving or use on more than one hardware device is inadmissible. The use of the software within one network or on another multi-workstation computer system is only admissible if this does not offer the possibility of simultaneous multiple use.

7.4 The customer may not duplicate the software, unless the utilisation of the software necessitates its duplication. Necessary duplication includes the installation of the software from the original data carrier onto the mass storage of the hardware used, unless this is prevented by the software's copy protection, as well as loading the software into the hardware's main memory. In addition, the customer may make a backup copy of the software as far as this is necessary for using the software under the terms of this contract. The customer may not make duplications in any other cases. This also applies to duplications of parts of the software and to the duplication of the user manual, whether in whole or in part. 7.5 The reverse translation of the software code into other forms of code (decompilation) as well as other methods of analysing the various steps of producing the software (reverse engineering) are only admissible within the scope of Sec. 40e of the [Austrian] Copyright Act.

7.6 The customer is not permitted to lease the software and the user manual for commercial purposes. Besides this, the customer may only pass on the software and the user manual if the third party accepts in writing continued applicability of the Licensing Conditions as per this point 7, and if the customer hands over to the third party or deletes all copies of the software. The customer's right to use the software expires upon the handing over thereof. The customer is obliged to provide the name and full address of the third party to NEVARIS Bausoftware GmbH. The customer may neither sell nor temporarily hand over – in particular rent or lend – to third parties the software and the user documentation pertaining thereto without the consent of NEVARIS Bausoftware GmbH.

7.7 The customer may not remove or alter copyright notes, serial numbers or other features that serve to identify the software.

7.8 If the software is protected against unauthorised copying by a dongle, the customer may not request a replacement from NEVARIS Bausoftware GmbH in case the dongle is damaged, stolen or otherwise disappears. This does not apply when NEVARIS Bausoftware GmbH is responsible for the damage to or the disappearance of the dongle. If the dongle delivered by NEVARIS Bausoftware GmbH is defective, all other warranty claims of the customer under points 10 and 11 below remain unaffected thereby.

8. Licensing Conditions of Third-Party Producers

As far as the software listed in the order confirmation is a software not produced by NEVARIS Bausoftware GmbH itself, the Licensing Conditions provided in point 7 also apply, in addition to the Licensing Conditions of the respective producer, knowledge of which the customer expressly confirms, unless otherwise agreed in the order confirmation.

9. Use of Copyrighted Works

As far as the customer is granted a licence upon delivery of the software under the above points 4, 7 and 8 against a one-time fee, the granting of the rights does not come into effect before the customer has paid the amount due in full. If there is an ongoing business relationship between the customer and NEVARIS Bausoftware GmbH, payment in full of the fee owed is replaced by the payment of all amounts that have arisen out of the business relationship to AUER – Die Bausoftware GmbH and are due for payment. Before payment in full of the owed fee – in an ongoing business relationship, before payment of all amounts due for payment to NEVARIS – the customer may not transfer to third parties any licence rights to software delivered by NEVARIS Bausoftware GmbH

10. Warranty

10.1 The warranty period for goods delivered by NEVARIS Bausoftware GmbH is 6 months. This does not apply to defects that were fraudulently concealed by NEVARIS Bausoftware GmbH.

10.2 The customer shall forthwith inspect the goods delivered and give notice of any defects. NEVARIS Bausoftware GmbH only warrants for obvious defects if it receives notice thereof within 14 days.

10.3 If the goods delivered by NEVARIS Bausoftware GmbH turn out to be defective, NEVARIS Bausoftware GmbH must be given the opportunity, if necessary several times, – depending on the type of goods, nature of the defect or other circumstances – to remedy the defect through subsequent performance either by subsequent improvement or substitute delivery. It is at the discretion of NEVARIS Bausoftware GmbH to choose between subsequent improvement and substitute delivery.

10.4 If NEVARIS Bausoftware GmbH refuses to render subsequent performance, or if the subsequent performance fails, or if the customer cannot reasonably accept subsequent performance, the customer may, at its own discretion, demand a reduction of the purchase price (abatement) or rescind from the purchase contract, whereby the customer has no right of rescission if the defect is minor. The damage claims of the customer under point 11 below remain unaffected thereby.

10.5 NEVARIS Bausoftware GmbH expressly points to the fact that software programs cannot be produced entirely free from errors.

10.6 NEVARIS Bausoftware GmbH is only obliged to warrant for software delivered if the software does not meet the specifications agreed by contract or if it contains errors impairing the use of the software for the contractually intended use, or if the software does not exhibit the customary quality of similar software that may be reasonably expected by the customer (Sec. 923 Austrian Civil Code).

10.7 If NEVARIS Bausoftware GmbH delivers several goods simultaneously – including but not limited to the delivery of hard- and software – the customer's warranty claims are limited to the defective goods, in case of doubt. If only individual items of the goods delivered are defective, the customer may not rescind completely from the purchase, unless this has been expressly agreed upon in the contract, or unless the purchaser objectively has no interest in the non-defective goods without the defective goods.

10.8 NEVARIS Bausoftware GmbH issues no declaration of warranty pursuant to Sec. 880a Austrian Civil Code.

11. Damages

11.1. In the event of slight negligence, NEVARIS Bausoftware GmbH can only be held liable if material contractual obligations (cardinal duties) have been breached, however, its liability is limited to the direct average damage that may be expected for this type of goods and is typical for the type of contract, up to an amount corresponding to 5% of the net order sum; and for damage resulting from loss of life, personal injury or damage to health. In all other cases the preliminary contract, the contractual and the non-contractual liability of NEVARIS Bausoftware GmbH is limited to intent and gross negligence, whereby the limitation of liability also applies to damage caused by vicarious agents of NEVARIS Bausoftware GmbH. The limitation of liability does not apply to the liability of AUER – Die Bausoftware GmbH under product liability law.

11.2. The period of limitation for the customer's claims to damages for defective goods is 12 months. This does not apply to defects that were fraudulently concealed by NEVARIS Bausoftware GmbH.

12. Miscellaneous

12.1 If the customer is an entrepreneur, the venue for all disputes arising out of or in connection with the contracts between the customer and NEVARIS Bausoftware GmbH is Salzburg. Furthermore, Salzburg is the place of performance of all duties under the agreements between NEVARIS Bausoftware GmbH and the customer, provided the customer is an entrepreneur.

12.2 All contracts between NEVARIS Bausoftware GmbH and the customer are governed by Austrian law exclusively, to the exclusion of the UN Convention on the International Sale of Goods.

12.3 Should one or several provisions of these General Terms and Licensing Conditions be found to be invalid or should they become invalid due to circumstances arising at a later date, the validity of the remaining provisions of these General Terms and Licensing Conditions remain unaffected thereby. Such invalid provisions are to be replaced by provisions that fulfil the contracting parties' intended purpose most closely, had they considered the respective reason for the invalidity. The same applies to loopholes in these Generals Terms and Licensing Conditions.